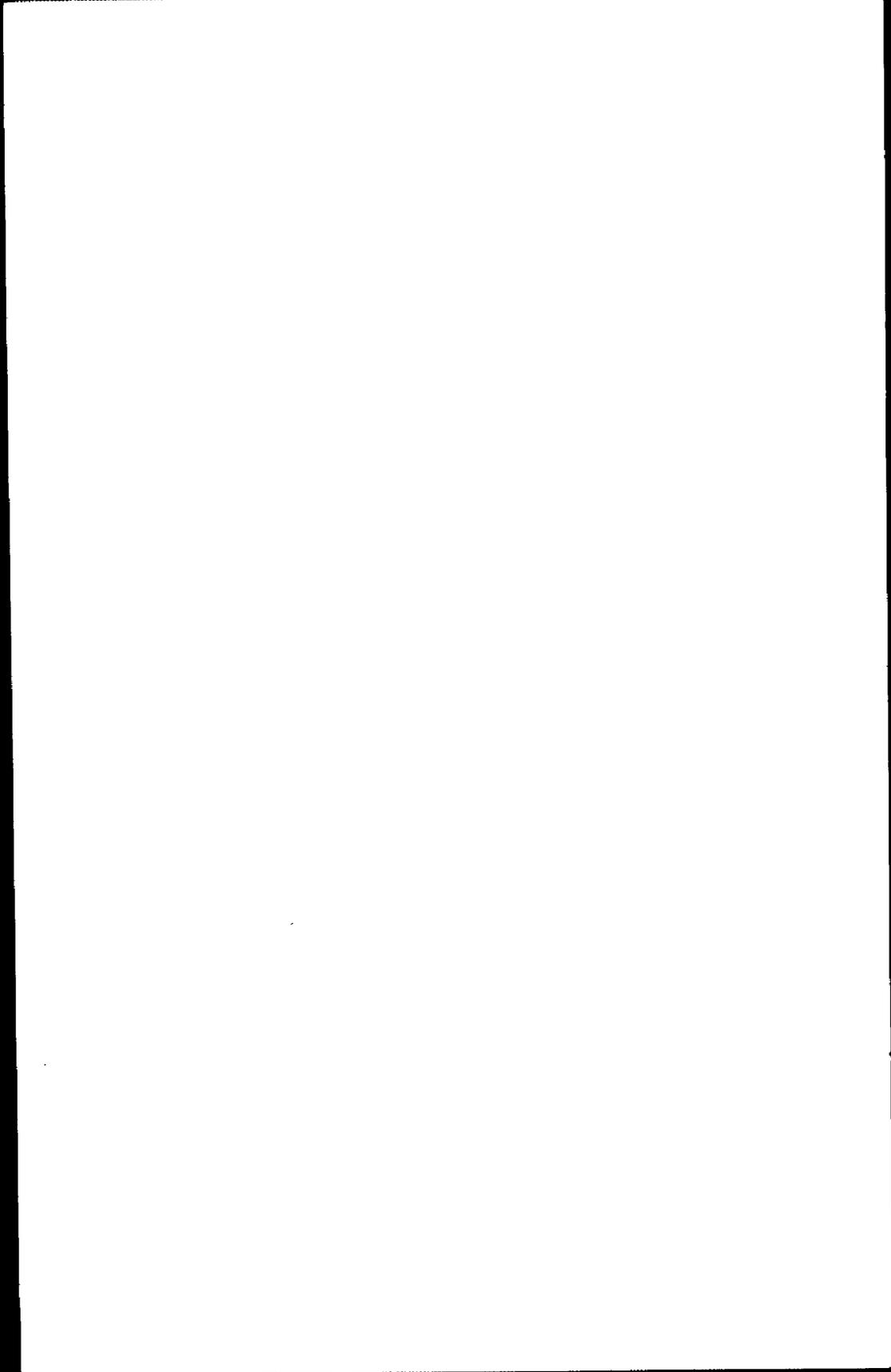


January 1988

**Digests of Unpublished  
Decisions of the  
Comptroller General  
of the United States**



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United States General Accounting Office

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**Charles A. Bowsher**

Comptroller General of the United States

**Milton J. Socolar**

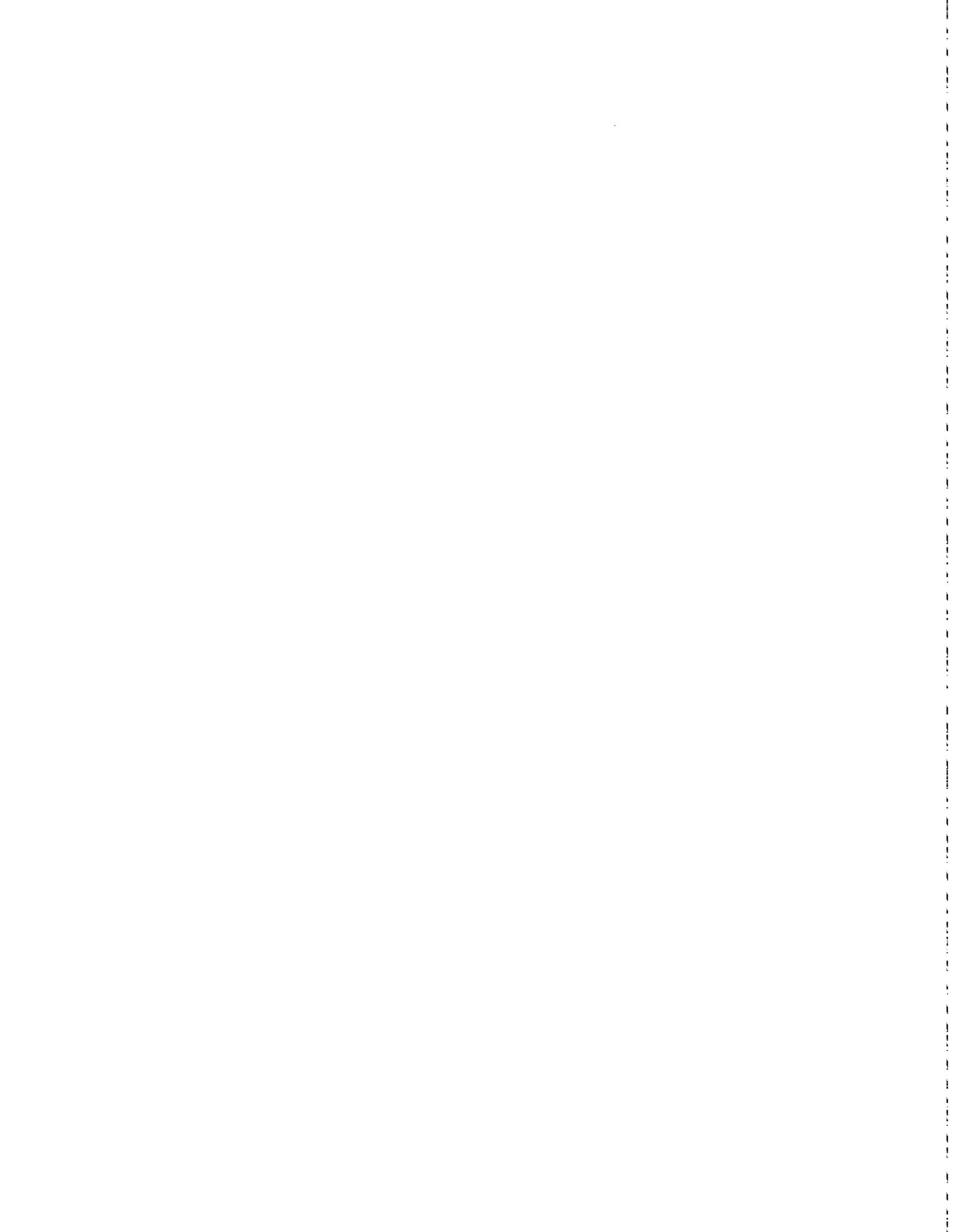
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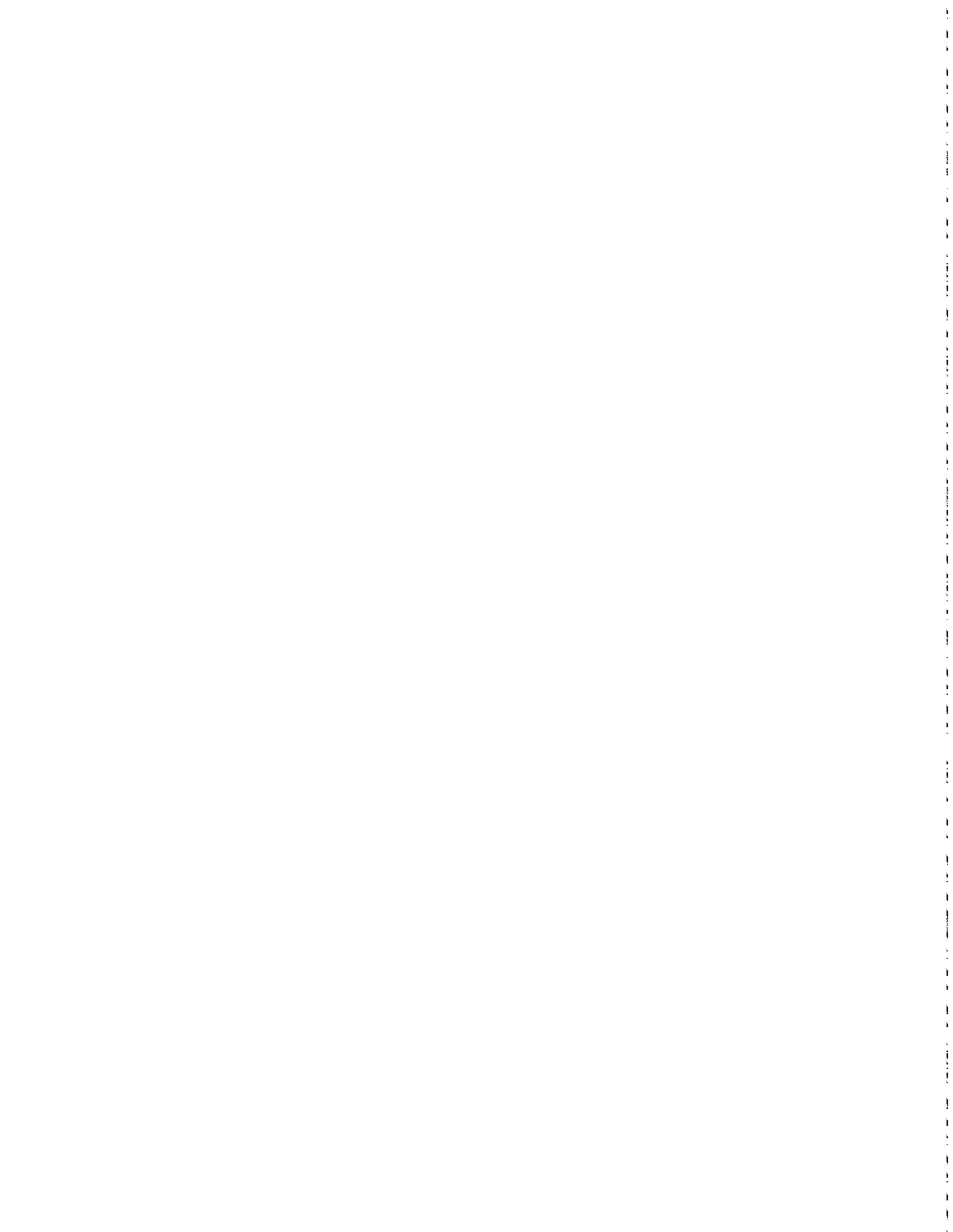


## PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions in connection with claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, 98 Pub. L. 369, July 18, 1984.

Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text of these decisions are available through the circulation of individual copies and should be cited by the appropriate file number and date, e.g., B-219654, Sept. 30, 1986.

The remaining 10 percent of decisions rendered are published in full text. Copies of these decisions are available through the circulation of individual copies, the issuance of monthly pamphlets and annual volumes. Decisions appearing in these volumes should be cited by volume, page number and year issued, e.g., 65 Comp. Gen. 624 (1986).



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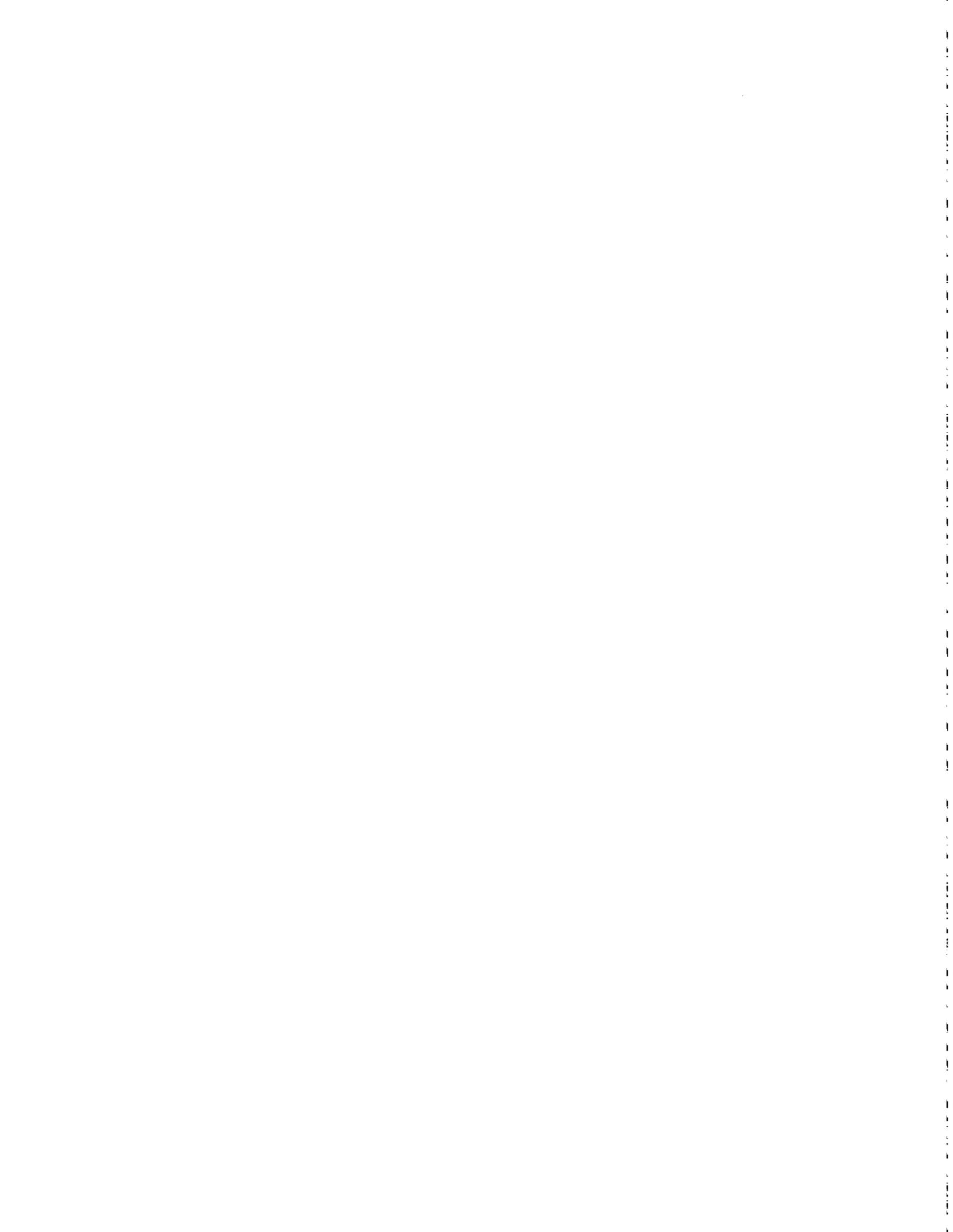


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**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers B-229808 Jan. 4, 1988**

**Disbursing Officers**

**Relief**

**Illegal/Improper Payments**

**Substitute Checks**

Relief is granted Army disbursing official under 31 U.S.C. § 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official and adequate collection actions were taken.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability B-227763 Jan. 5, 1988**

**Purpose Availability**

**Specific Purpose Restrictions**

**Telephones**

Installation of telephone "extenders" in Senators' home state offices (permitting access to WATS or FTS long distance service by calling the "extenders" from other telephones and dialing a special code) is authorized by 2 U.S.C. §§ 58a, 58(a) and 68-2, and is not otherwise precluded by 31 U.S.C. § 1348(a)(1), since it neither involves an installation of telephone equipment in a Senator's residence nor contravenes the policy of the law--that the government not be charged for the cost of personal messages of its employees--even though it may involve the contravention of the literal language of the law prohibiting the government from paying the cost of "tolls or other charges from private residences"--and under decisions of this office it is the underlying policy and not the literal language of the law which is controlling. Under proposal, billings for long distance calls placed by a caller using an "extender" will be subject to the same audit verification (that they are for official business) as are long distance calls otherwise placed directly from Senators' offices.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**

**B-229587 Jan. 6, 1988**

**Cashiers**

**Relief**

**Physical Losses**

**Theft**

Forest Service cashier is relieved of liability for stolen imprest funds. Although the cashier may have been negligent in not complying with agency guidelines for storing the combination to her safe, the negligence was not the proximate cause of the loss. The funds would have been stolen even if the cashier had complied. The real cause of the loss was the agency's failure to promulgate the more stringent procedures contained in the Treasury Department's Manual for Cashiers, which if adopted, probably would have prevented the theft.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Claims Against Government B-222666 Jan. 11, 1988**

**Claim Settlement**

**Accounts**

**Liability**

Security Assistance Management Manual (SAMM) is unclear on what should happen when a Foreign Military Sales (FMS) customer claims non-receipt of materiel and the responsible Army depot, while producing some evidence of shipment, cannot adequately document that it shipped the materiel nor determine with certainty whether inventories were reduced accordingly. Defense Security Assistance Agency (DSAA) believes discrepancy should be charged to Army appropriated funds rather than to FMS administrative funds. GAO defers to DSAA since DSAA is responsible for issuing SAMM and GAO cannot conclude that DSAA position is plainly erroneous.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability B-226781 Jan. 11, 1988**

**Purpose Availability**

**Necessary Expenses Rule**

Appropriated funds may be used to buy Christmas decorations for an interpretive display at the Grant-Kohrs Ranch National Historic Site where such an expense is directly related to the National Park Service authority in administering historic sites. However, appropriated funds may not be used for open house expenses since such funds may not be used for entertaining individuals for public relations purposes unless specifically authorized.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers B-229903 Jan. 11, 1988**

**Disbursing Officers**

**Relief**

**Illegal/Improper Payments**

**Substitute Checks**

Relief is granted Army disbursing official and his successor under 31 U.S.C. § 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check and there was no indication of bad faith on the part of the disbursing officials. Collection efforts were unsuccessful due to the fact that the payee firm had filed for bankruptcy prior to the finance office being notified that a loss had occurred.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**            **B-229827**    **Jan. 14, 1988**  
**Disbursing Officers**  
**Relief**  
**Illegal/Improper Payments**  
**Substitute Checks**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**  
**Disbursing Officers**  
**Relief**  
**Physical Losses**  
**GAO Review**

U.S. Army finance and accounting officer is relieved of liability for improper payments made by subordinate cashiers because he maintained and supervised an adequate system of controls to prevent improper payments. All of the cashiers are also relieved because they followed all prescribed procedures for cashing checks, notwithstanding that the payee circumvented those procedures through criminal activity.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**            **B-228946**    **Jan. 15, 1988**  
**Certifying Officers**  
**Relief**  
**Illegal/Improper Payments**  
**Overpayments**

Relief is granted to supervisory financial officer where subordinate made excess payment as a result of improper use of an adding machine, but the office was properly supervised and the primary accountable officer was in no way negligent.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officer                    B-229274    Jan. 15, 1988**  
**Disbursing Officers**  
**Relief**  
**Illegal/Improper Payments**  
**Fraud**

U.S. Army Finance and Accounting Officer is relieved of liability for improper payments actually certified and disbursed by subordinates because he maintained and supervised an adequate system of procedures to prevent improper payments. The improper payments in the case were the result of several employees making fraudulent travel vouchers.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers                    B-229136    Jan. 22, 1988**  
**Cashiers**  
**Relief**  
**Physical Losses**  
**Theft**

Pursuant to 31 U.S.C. § 3527(a), relief granted to Ms. Tammie Webb, Principal Imprest Fund Cashier for the U.S. Department of Housing and Urban Development, Region VI, Little Rock, Arkansas for a \$3,434.12, imprest fund loss. Although cashiers are held to a standard of strict liability, relief is granted if the evidence clearly indicates a theft took place and an investigation reveals no connection between the accountable officer and the theft.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**

**B-229847 Jan. 29, 1988**

**Cashiers**

**Relief**

**Physical Losses**

**Theft**

Special Agency who had \$1,000 in agent cashier funds stolen from his hotel room while working on an undercover assignment may properly be relieved of liability for the loss where the record indicates that the agent was neither negligent nor careless with regard to the funds and the agent was not implicated in the loss.

**CIVILIAN PERSONNEL**

**CIVILIAN PERSONNEL**

**B-226425 Jan. 4, 1988**

**Compensation**

**Retirement Plans**

**Payroll Deductions**

**Underdeductions**

An employee's change in appointment from a reemployed annuitant to a permanent Senior Executive Service position was incorrectly implemented by his employing agency, and no deduction was made from his salary for his contribution into the retirement fund for nearly 4 years. The agency is advised that there is no authority for the agency to pay the employee's share of his retirement contribution so that he may receive additional service credit. Congress has provided the employee with a solution in 5 U.S.C. § 8344(a)(B) (1982), which provides that he can attain additional service credit by voluntarily making a deposit in the retirement fund. See Sakran v. United States, 176 Ct. Cl. 831 (1966).

**CIVILIAN PERSONNEL  
Relocation**

**B-228623 Jan. 4, 1988**

**Temporary Quarters  
Actual Subsistence Expenses  
Reimbursement  
Eligibility**

A transferred employee claims entitlement to temporary quarters subsistence expense reimbursement for himself and his immediate family at his new station even though the family returned to their former residence 2 months later and remained there for a protracted time. The claim for temporary quarters for the family at the new duty station may be allowed. At issue is whether there is objective evidence of intent to vacate the former residence. We find that the requisite intent to vacate the former residence has been manifested since their former residence had been put up for sale, their household goods shipped and placed in storage at the new duty station, and the events which compelled their return did not arise until after they traveled to the new duty station. John L. Reid, B-227193, Oct. 16, 1987. B-228623, January 4, 1988 affirms B-227193, October 16, 1987.

**Relocation****Actual Expenses****Eligibility****Administrative Determination****Errors**

An employee who was reinstated with the FBI after a break in service of 6 years, took the oath of office in Buffalo, New York, which was designated as his "headquarters," and he then was sent for new agents' training in Quantico, Virginia. At the completion of his training he was advised that he was being transferred directly to New York City and that he would be reimbursed relocation expenses from Buffalo to New York. After his arrival in New York the employee was informed that he had been given erroneous advice and was entitled only to the allowances for transportation of dependents and household goods authorized by 28 U.S.C. § 530. The employee's claim for the additional relocation expenses and interest on loans may not be allowed since Buffalo was not his permanent duty station for relocation allowance purposes, and the government cannot be bound by the erroneous advice of its agents.

**Relocation****Household Goods****Shipment****Restrictions****Privately-owned Vehicles**

Under the Federal Travel Regulations, an employee who is authorized common carrier air travel but who, as a matter of personal preference, flies his personally owned aircraft is limited to the lesser of that cost or the constructive cost of common carrier air travel. The employee is not entitled to the higher actual cost of his relocation travel by using his privately-owned aircraft merely because he may have saved the government money by hauling household goods authorized for shipment under a Government Bill of Lading. The value of hauling these household goods may not be used in computing the cost comparison between travel by common carrier and privately-owned aircraft.

If lower-class space is generally available on scheduled flights, the Federal Travel Regulations provide that a first-class airfare may not be used to compute the constructive cost of common carrier air travel in reimbursing the employee the lesser of the constructive cost or the actual travel cost by privately-owned aircraft used as a matter of personal preference. Although in this case the coach seats may have been booked on flights until the day after the travel began, less than first-class travel was generally available on scheduled flights.

**CIVILIAN PERSONNEL****B-224628 Con't****Relocation****Jan. 12, 1988****Residence Transaction Expenses****Broker Fees****Reimbursement**

The Federal Travel Regulations prohibit reimbursement of a broker's fee or real estate commission for services in purchasing a residence at the new duty station. Where under state law a "real estate broker" is defined to include a person negotiating a purchase, the employee's real estate consultant was a broker, and his fee for negotiating the price of a condominium at the new duty station, as well as for related services, was a broker's fee prohibited by the applicable regulations.

**CIVILIAN PERSONNEL****Relocation****Residence Transaction Expenses****Reimbursement****Eligibility****Time Restrictions**

To be reimbursed real estate expenses for the sale of the residence at the old duty station, the Federal Travel Regulations provide that settlement must occur within 2 years after the employee's transfer, with an additional 1-year extension which may be authorized by the agency. The time limit may not be increased beyond the maximum 3-year period because the employee had additional transfers subsequent to his transfer from the duty station where the residence is located.

**Travel****Jan. 12, 1988****Actual Subsistence Expenses  
Eligibility**

Under the Federal Travel Regulations, temporary quarters subsistence expenses are ordinarily limited to temporary quarters in the vicinity of the old or new duty station and are justified elsewhere only for unique circumstances, if reasonably related to the transfer and not for vacation purposes. The employing agency properly denied the expenses for the employee's son living in an apartment and working in the city where the family formerly resided but which was not one of the employee's official stations involved in the transfer. Similarly, after another son left the new duty station to live at college for the regular school term, that son's expenses were unrelated to the transfer and not allowable.

Temporary quarters subsistence expenses may be reimbursed while the employee is taking annual leave on trips away from temporary quarters established at the old or new duty station, provided the trip does not delay termination of temporary quarters and occupancy of a permanent residence at the new duty station. The fact that annual leave in excess of 240 hours might be forfeited if not taken before the end of the leave year should not be considered in making the determination as to whether use of the leave delayed the occupancy of permanent quarters. Any disallowance of the expenses when temporary quarters are interrupted for trips during annual leave does not add to the maximum period of 60 consecutive days of temporary quarters subsistence expenses authorized by the Federal Travel Regulations.

**CIVILIAN PERSONNEL**

**B-224628 Con't**

**Travel**

**Jan. 12, 1988**

**Temporary Quarters**

**Miscellaneous Expenses**

**Eligibility**

An employee in temporary quarters is not entitled to reimbursement for the cost of telephone installation. A telephone user fee is reimbursable if ordinarily included in motel and hotel bills in the local area of temporary quarters.

**CIVILIAN PERSONNEL**

**Travel**

**Travel Expenses**

**Reimbursement**

**Interest**

An employee is not entitled to interest for delayed payment of travel expenses under the Prompt Payment Act, 31 U.S.C. §§ 3901-3906 (1982). Interest under the Act is payable only to business concerns furnishing property or services to the government.

**CIVILIAN PERSONNEL**

**B-226426 Jan. 19, 1988**

**Relocation**

**Household Goods**

**Shipment**

**Restrictions**

**Privately-owned Vehicles**

An employee retiring from an overseas post who had a new automobile shipped directly to New York City from the overseas factory without delivery to him at his last overseas post is not entitled to government reimbursement of costs he incurred to transport the automobile from New York City to his residence since he did not purchase it for use in a foreign country, as required to qualify for reimbursement under the Foreign Affairs Manual.

**CIVILIAN PERSONNEL**  
**Leaves of Absence**  
**Annual Leave**  
**Forfeiture**  
**Restoration**

**B-229228 Jan. 21, 1988**

An employee did not schedule annual leave in advance and in writing as required by 5 U.S.C. § 6304(d)(1) (1982) and the implementing regulations. The annual leave forfeited due to the exigencies of public business may not be restored under the statute and regulations since the leave was not scheduled in advance. The statutory scheduling requirement is not met by informal notification or verbal request, and the requirement may not be waived or modified even where extenuating circumstances may exist.

**CIVILIAN PERSONNEL**  
**Compensation**  
**Reduction-in-Force**  
**Procedural Defects**

**B-227506 Jan. 29, 1988**

Employee who resigned following a general announcement of a proposed reduction in force (RIF) contends that the agency did not follow proper procedures in conducting the RIF. This Office cannot consider the employees' contention because challenges to agency RIF actions must either be processed through a negotiated grievance procedure, if applicable, or presented to the Merit Systems Protection Board.

**CIVILIAN PERSONNEL**  
**Compensation**  
**Severance Pay**  
**Eligibility**  
**Reduction-in-Force**  
**Notification**

**B-227506 Con't**  
**Jan. 29, 1988**

Employee resigned following a general announcement of a proposed reduction in force (RIF) but before the agency issued specific notice of personnel actions to be effected pursuant to the RIF. The employee is not eligible for severance pay under 5 U.S.C. § 5595, because implementing regulations allow severance pay only if an employee resigns subsequent to specific notice of a RIF action (5 C.F.R. § 550.706(a)(1)) or general notice that all positions within the employee's competitive area will be abolished (5 C.F.R. § 550.706(a)(2)). The RIF notice that the employee received before resigning did not qualify as a general notice under 5 C.F.R. § 550.706(a)(2) because it did not announce the abolishment of all positions within the employee's competitive area.



**MILITARY PERSONNEL**

**MILITARY PERSONNEL**

**B-229157 Jan. 11, 1988**

**Pay**

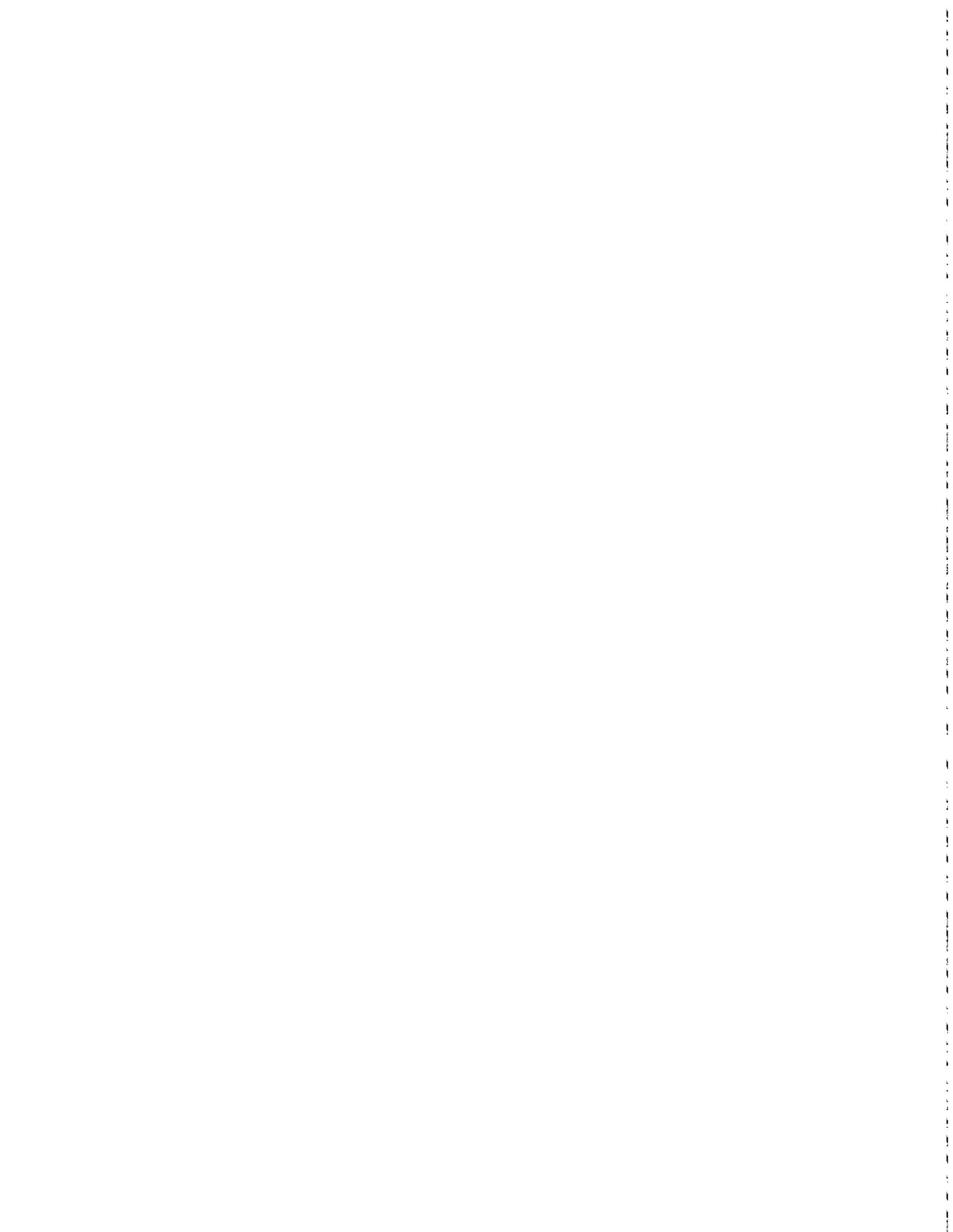
**Survivor Benefits**

**Annuity Payments**

**Eligibility**

A claim for Survivor Benefit Plan (SBP) annuity submitted by the first wife of a recently deceased, retired service member is authorized by our Office since the record indicates that the member never obtained a divorce from his first wife before entering into a ceremonial marriage with another woman. With no evidence of a marriage prior to that entered into with his first wife and no evidence of a divorce from his first wife, the member's first wife remains his legal widow. As such, she is entitled to an SBP annuity when the member made an election for his surviving spouse.

The legal widow of a retired service member is entitled to a Survivor Benefit Plan (SBP) annuity even though the member named another woman as his spouse on his SBP election form. Since the member retired after September 21, 1972, the effective date of the SBP, the listing of his spouse on the election form is for administrative convenience. The fact that the woman named was not actually the member's spouse does not preclude his surviving spouse from benefiting from the Plan.





**PROCUREMENT**

**Bid Protests  
Conferences  
Justification**

**B-228570.2 Jan. 5, 1988**

**88-1 CPD 3**

Request for a conference is denied where having one would serve no useful purpose.

**PROCUREMENT**

**Bid Protests  
GAO Procedures  
Preparation Costs**

**PROCUREMENT**

**Sealed Bidding  
Bids  
Preparation Costs**

Claims for bid preparation costs and the costs of filing and pursuing a protest are denied where there has been no finding that the protester was excluded unreasonably from the procurement.

**PROCUREMENT**

**B-229516 Jan. 5, 1988**

**Socio-Economic Policies**

**Small Business 8(a) Subcontracting**

**Catalog/Market Price Exemptions**

**Federal Procurement Regulations/Laws  
Amendments**

**PROCUREMENT**

**Socio-Economic Policies**

**Small Business Set-Asides**

**Catalog/Market Price Exemptions**

**Federal Procurement Regulations/Laws  
Amendments**

In response to an interim Federal Acquisition Circular (FAC) amending parts 14, 19 and 52 of the Federal Acquisition Regulation (FAR) to implement changes regarding set-asides and 8(a) awards required by Pub. L. Nos. 99-661, 99-591 and 100-26, the General Accounting Office advises that an exception to the fair market price ceiling on 8(a) awards must be included in the FAR final rule to accommodate statutory provisions which permit payments over the fair market price.

**PROCUREMENT**

**B-228356 Jan. 6, 1988**

**Bid Protests**

**88-1 CPD 8**

**GAO Procedures**

**Protest Timeliness**

**Apparent Solicitation Improprieties**

Protest based on alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that date. Bidder cannot challenge specifications after bid opening by including "clarifications" in its bid.

**PROCUREMENT**  
**Sealed Bidding**  
**Qualified Bids**  
**Responsiveness**

**B-228356 Con't**  
**Jan. 6, 1988**

Bid for firm, fixed-price contract for furnishing and installing surveillance system is nonresponsive where the bid price is conditional upon the contracting agency providing telephone lines to support the system.

**PROCUREMENT**  
**Special Procurement**  
**Methods/Categories**  
**In-House Performance**  
**Administrative Discretion**  
**GAO Review**

**B-228885.2 Jan. 6, 1988**  
**88-1 CPD 9**

Protest of agency determination under Office of Management and Budget Circular A-76 to maintain in-house performance of various operations and maintenance functions is denied where it has not been shown that the agency conducting the cost comparison failed to comply with A-76 requirements.

**PROCUREMENT**  
**Special Procurement Methods/Categories**  
**In-House Performance**  
**Cost Estimates**  
**GAO Review**

Where an A-76 cost comparison showing that contractor performance would be more economical than in-house performance is appealed, the apparent successful offeror should be allowed a reasonable opportunity to raise and have considered cost comparison issues that could result in adjustments offsetting those urged in the appeals.

Objections to A-76 cost comparison will not be considered in the context of a protest where the protester failed to advise the agency of its objections at the time the agency was considering appeals of the cost comparison determination.

**PROCUREMENT**

**B-228204.2 Jan. 7, 1988**

**Bid Protests**

**88-1 CPD 10**

**Federal Procurement Regulations/Laws**

**Applicability**

**GAO Authority**

Federal procurement statutes and regulations do not apply, per se, to cost reimbursement, no fee, prime contractor, rather, under such a contract the prime contractor must conduct procurements according to the terms of its contract with the agency and its own agency-approved procedures. General Accounting Office review is to determine whether the procurement conforms to the federal norm, i.e., the policy objectives in the federal statutes and regulations.

**PROCUREMENT**

**Contract Management**

**Contract Administration**

**Contract Terms**

**Compliance**

**GAO Review**

Where bidder does not take exception to the solicitation's Buy American Act requirement that it use only domestic construction material, it is obligated to do so upon acceptance of its bid, and whether the firm in fact meets its obligation is a matter of contract administration which the General Accounting Office does not review.



**PROCUREMENT**

**B-228443 Jan. 7, 1988**

**Sealed Bidding**

**88-1 CPD 12**

**Bids**

**Responsiveness**

**Shipment Schedules**

**Deviation**

Bid that fails unambiguously to commit the bidder to the required completion date is nonresponsive.

**PROCUREMENT**

**B-228544 Jan. 7, 1988**

**Competitive Negotiation**

**88-1 CPD 13**

**Requests for Quotations**

**Cancellation**

**Justification**

**Minimum Needs Standards**

**PROCUREMENT**

**Specifications**

**Minimum Needs Standards**

**Competitive Restrictions**

**Design Specifications**

**Overstatement**

Where specifications associated with request for quotations, are in excess of contracting agency's minimum needs, protester is not entitled to delivery order under its Federal Supply Schedule contract and an agency may reprocur through an open market procurement with reduced requirements.

**PROCUREMENT** **B-229762 Jan. 7, 1988**  
**Competitive Negotiation 88-1 CPD 14**  
**Hand-Carried Offers**  
**Late Submission**  
**Acceptance Criteria**  
**Acceptance**

Procuring agency's rejection of protester's late proposal delivered by commercial carrier is upheld where the proposal did not meet any of the exceptions for consideration of late proposals in the solicitation's late proposal clause.

**PROCUREMENT** **B-228515 Jan. 11, 1988**  
**Bid Protests 88-1 CPD 15**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Allegation that specification contained in solicitation is restrictive and reflects bias toward awardee's product which was initially raised in protester's comments to agency report is untimely. Arguments regarding solicitation improprieties which are apparent from the face of the solicitation must be filed prior to bid opening.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**

**B-228515 Con't**  
**Jan. 11, 1988**

**Responsiveness**  
**Descriptive Literature**  
**Adequacy**

Where an invitation for bids required descriptive literature sufficient to determine whether the offered item conforms to the technical specifications and bidders were advised that failure to do so would require rejection of their bids, the procuring agency properly rejected as nonresponsive a bid that included descriptive literature showing nonconformance despite blanket statement of compliance also contained in the bid.

Protest that product offered by awardee is also nonresponsive is denied where descriptive literature submitted by awardee shows compliance with solicitation requirements.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**

**Responsiveness**  
**Terms**  
**Deviation**

Even if protester's contention that its product has been found acceptable under similar contracts is true, protester's bid was properly rejected as nonresponsive since an agency's waiver of a requirement on a prior procurement does not affect the rejection of a nonresponsive bid under the current procurement.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Agency Notification**  
**Late Submission**

**B-228518 Jan. 11, 1988**  
**88-1 CPD 16**

When an agency has actual notice of the basis of protest and delivers its report in a timely fashion, the General Accounting Office will not dismiss the protest because the protester failed to timely serve the contracting officer in the absence of a showing that the agency was prejudiced by the late receipt of notice.

**PROCUREMENT**  
**Bid Protests**  
**Private Disputes**  
**GAO Review**

Certificate of Independent Price Determination is not violated where former employees allegedly improperly used proprietary material absent collusion between bidders or an indication that a firm was prevented from bidding, since this involves a dispute between private parties.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Technical Acceptability**

Protester's contention that awardee was technically unacceptable is denied where the protester does not show that the procuring agency's evaluation of the proposal was clearly unreasonable.



**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Amendments**  
**Acknowledgment**  
**Responsiveness**

**B-228522 Con't**  
**Jan. 11, 1988**

Contracting officer properly accepted bid that failed to acknowledge a solicitation amendment with changes which either clarified existing specification requirements, made minimal nonmaterial changes or had only a minimal impact on cost.

**PROCUREMENT**  
**Contract Management**  
**Contract Administration**  
**Contract Terms**  
**Interpretation**

**B-228262 Jan. 12, 1988**  
**88-1 CPD 18**

Where the language in a contract is clear and unambiguous, contractual terms will be given their usual and ordinary meaning.

**PROCUREMENT**  
**Payment/Discharge**  
**Payment Terms**  
**Contract Terms**  
**Line Items**

The Department of the Interior is authorized to pay a contract line item for bonds and insurance that is in excess of the cost of the bonds and insurance, where payment of the amount for that item is consistent with the language of the contract and the intent of the parties.

**PROCUREMENT**  
**Sealed Bidding**  
**Unbalanced Bids**  
**Materiality**  
**Responsiveness**

**B-228262 Con't**  
**Jan. 12, 1988**

Where the contracting officer determines that a mathematically unbalanced bid is not materially unbalanced because award will result in the lowest overall cost to the government, and a contract is awarded on that basis, the government is obligated to pay the contractor in accordance with the terms of the contract.

**PROCUREMENT**  
**Special Procurement**  
**Methods/Categories**  
**Federal Supply Schedule**  
**Multiple/Aggregate Awards**  
**Mandatory Use**  
**GAO Review**

**B-228366 Jan. 12, 1988**  
**88-1 CPD 19**

When a contracting agency awards a purchase order to other than the lowest priced vendor under a mandatory, multiple-award Federal Supply Schedule contract, the General Accounting Office will review the agency's justification for making the award to insure that the award selection is reasonably based.

**PROCUREMENT**  
**Special Procurement Methods/Categories**  
**Federal Supply Schedule**  
**Purchases**  
**Cost/Technical Tradeoffs**  
**Technical Superiority**

When placing an order under a mandatory, multiple-award Federal Supply Schedule contract, a contracting agency is not required to select the lowest priced vendor where the agency reasonably determines that only the higher priced vendor's product offers features necessary to obtain effective performance.

**PROCUREMENT**

**B-228507 Jan. 12, 1988**

**Sealed Bidding**

**88-1 CPD 20**

**Bids**

**Responsiveness**

**Brand Name/Equal Specifications**

**Equivalent Products**

**PROCUREMENT**

**Sealed Bidding**

**Bids**

**Responsiveness**

**Pre-Award Samples**

**Acceptability**

Where solicitation for brand-name or equal carpet required successful low bidder to provide a sample which conforms to the requirements listed in the solicitation, protester's bid was properly rejected where bid sample did not conform to the listed specifications.

**PROCUREMENT**

**B-229577 Jan. 12, 1988**

**Bid Protests**

**88-1 CPD 21**

**GAO Procedures**

**Interested Parties**

Large business protester is not an interested party to protest allegedly ambiguous specifications in a small business set-aside solicitation, since the protester would not be affected by the resolution of the issue.

<b>PROCUREMENT</b>	<b>B-229596; B-229598</b>
<b>Sealed Bidding</b>	<b>Jan. 12, 1988</b>
<b>Invitations for Bids</b>	<b>88-1 CPD 22</b>
<b>Cancellation</b>	
<b>Resolicitation</b>	
<b>Propriety</b>	

A compelling reason exists for canceling an invitation for bids (IFB) for the overhaul of a naval vessel after bid opening and resoliciting the requirements under a request for proposals where the unavailability of the naval vessel renders the IFB inadequate to express the minimum needs of the government.

<b>PROCUREMENT</b>	<b>B-227865.3 Jan. 13, 1988</b>
<b>Bid Protests</b>	<b>88-1 CPD 23</b>
<b>Award Pending Appeals</b>	
<b>Propriety</b>	

Where an agency makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States will not permit waiting for a decision by the General Accounting Office (GAO) on a bid protest, and orally notifies GAO prior to awarding a contract, the agency has complied with 31 U.S.C. § 3553(c) (Supp. III 1985) in proceeding with the award.

**PROCUREMENT**

**Bid Protests**

**GAO Procedures**

**Protest Timeliness**

**10-day Rule**

**Effective Dates**

**B-227865.3 Con't**

**Jan. 13, 1988**

General Accounting Office (GAO) resolves doubts regarding timeliness of contentions supporting an initial protest that are primarily based upon information, which the protester diligently pursued under the Freedom of Information Act but only obtained 3 months after its initial protest was filed, in favor of the protester and considers these contentions filed at GAO within 10 working days of when the protester obtained the information.

**PROCUREMENT**

**Bid Protests**

**Non-Prejudicial Allegation**

**GAO Review**

An offeror was not prejudiced by an agency's refusal to accept information relating to its responsibility after the closing date for receipt of best and final offers but before award where the offeror did not furnish this information by the date when award was reasonably required to be made. An agency is not required to delay an award indefinitely while an offeror attempts to cure the causes of its nonresponsibility.

**PROCUREMENT**  
**Bid Protests**  
**Premature Allegation**  
**GAO Review**

**B-227865.3 Con't**  
**Jan. 13, 1988**

A protester need not protest until it has knowledge that the agency is intending action that is believed incorrect or inimical to the protester's interests and need not file a "defensive" protest where an agency has not made a final determination since a protester may presume that the agency will act properly.

**PROCUREMENT**  
**Competitive Negotiation**  
**Best/Final Offers**  
**Modification**  
**Late Submission**  
**Acceptance Criteria**

Substantial proposal revision not solely relating to the offeror's responsibility submitted after the date for receipt of best and final offers was properly rejected as a late proposal modification.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Shipment Costs**

Where a request for proposals for transportation services to transport cargo between the United States and foreign ports authorizes partial awards, the procuring agency may reject all offerors' rates for a certain type of service.

**PROCUREMENT** B-228142.2 Jan. 13, 1988  
**Competitive Negotiation** 88-1 CPD 24  
**Offers**  
**Competitive Ranges**  
**Inclusion**  
**Administrative Discretion**

In a negotiated procurement, an initial proposal that failed to comply with solicitation's bid bond requirement may be included in the competitive range where the agency concludes that the proposal was reasonably susceptible of being made acceptable through discussion.

The fact that an agency originally rejected an initial proposal when the agency sought to make awards based upon initial proposals does not preclude the agency from later including that proposal within the competitive range when the agency decided to reopen the competition.

**PROCUREMENT** B-228155 Jan. 13, 1988  
**Bid Protests** 88-1 CPD 25  
**GAO Procedures**  
**Interested Parties**

Protester which did not submit a proposal is an interested party to protest that contracting agency improperly precluded it from participation in a procurement.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Protest alleging that contracting agency failed to provide protester with a response to protester's questions concerning solicitation and with copies of solicitation amendments in which closing dates were extended is untimely since protest should have been filed prior to closing date originally established in solicitation or, at the latest, prior to extended closing date of which protester had knowledge by virtue of telephone advice from the contracting officer.

**PROCUREMENT** **B-228170.4 Jan. 13, 1988**  
**Bid Protests** **88-1 CPD 26**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Protest of allegedly ambiguous solicitation provision filed after bid opening is untimely.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Ambiguous Prices**  
**Rejection**  
**Propriety**

Protest of rejection of very low bid because bidder would not verify it and acceptance would be unfair is denied, where firm subsequently admits it did not price a significant part of the required work on the basis that the work was deleted by the solicitation amendment, but the amendment cannot reasonably be read as deleting the work.

**PROCUREMENT** **B-228302 Jan. 13, 1988**  
**Special Procurement** **88-1 CPD 27**  
**Methods/Categories**  
**Federal Supply Schedule**  
**Mandatory Use**

Protest of award to vendor with Federal Supply Schedule contract, by a firm that offered equipment not covered by a schedule contract, is denied, since the schedule was mandatory, and where items on a mandatory schedule will satisfy the agency's minimum needs, the agency is required to purchase its requirements from the schedule.

**PROCUREMENT** B-228348.2 Jan. 13, 1988  
**Bid Protests** 88-1 CPD 28  
**GAO Procedures**  
**Administrative Reports**  
**Comments Timeliness**

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

General Accounting Office (GAO) will not reopen a protest which it dismissed because the protester failed to comment within 7 working days after receipt of the agency report, as required by the Bid Protest Regulations, when the protester failed to advise GAO that it had not received the report on the due date.

**PROCUREMENT** B-228400 Jan. 13, 1988  
**Special Procurement** 88-1 CPD 29  
**Methods/Categories**  
**Federal Supply Schedule**  
**Purchases**  
**Cost/Technical Tradeoffs**  
**Justification**

There is no legal objection to an award based on a higher priced quotation under a mandatory Federal Supply Schedule (FSS) contract where the agency has determined that the protester did not offer the required 5 year warranty based on its quotation and review of the FSS contract.

**PROCUREMENT**

**B-228584 Jan. 13, 1988**

**Bid Protests**

**88-1 CPD 30**

**Allegation Substantiation**

**Lacking**

**GAO Review**

Protester's objection that awardee improperly obtained information from protester and from the procuring agency is based on speculation and does not provide a basis upon which to challenge the award.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Evaluation**

**Technical Acceptability**

General Accounting Office will not disturb an agency's technical determination absent evidence indicating that the agency's evaluation was unreasonable.

**PROCUREMENT**

**Contract Management**

**Contract Administration**

**Contract Terms**

**Compliance**

**GAO Review**

Allegation that contractor will not be able to supply the required services without asking the agency to provide office facilities and funding increases involves questions of contract administration which the General Accounting Office does not review.

**PROCUREMENT** B-229828 Jan. 13, 1988  
**Bid Protests** 88-1 CPD 31  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Protest that solicitation was unduly restrictive is untimely where the protest was filed after bid opening.

**PROCUREMENT** B-224313.3 Jan. 14, 1988  
**Competitive Negotiation** 88-1 CPD 32  
**Offers**  
**Evaluation Errors**  
**Allegation Substantiation**

Agency properly did not consider alleged cost savings accruing from protester's offer to waive termination costs otherwise claimed under a predecessor contract since these costs are speculative and the solicitation did not provide for their consideration.

Speculation that the agency may have improperly evaluated proposals does not provide a valid basis for protest.

**PROCUREMENT** B-228210 Jan. 14, 1988  
**Bid Protests** 88-1 CPD 33  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

Protest challenging contracting agency's decision to order services under existing contract with another firm instead of exercising option under protester's contract is timely when filed within 10 days after protester was notified of agency's final decision.

**PROCUREMENT** **B-228210 Con't**  
**Contract Management** **Jan. 14, 1988**  
**Contract Administration**  
**Options**  
**Use**  
**GAO Review**

Incumbent contractor's challenge to contracting agency's failure to exercise option is dismissed since decision whether to exercise option is a matter of contract administration outside General Accounting Office bid protest function.

**PROCUREMENT**  
**Special Procurement Methods/Categories**  
**Requirements Contracts**  
**Use**  
**Support Services**

Protest challenging contracting agency's decision to order aircraft maintenance and comprehensive logistical support services under requirements-type contract for maintenance services only is sustained where services being procured are materially different from those contemplated by the contract.

**PROCUREMENT** **B-228385 Jan. 14, 1988**  
**Sealed Bidding** **88-1 CPD 34**  
**Invitations for Bids**  
**Terms**  
**Proprietary Information**  
**Licenses**

Protest of solicitation requirement for software license agreement with manufacturer of computer system for which maintenance and repair services are being procured is denied, since the record shows that the software is an integral part of the system, and required revisions cannot be obtained without a license agreement.

**PROCUREMENT** B-228916.2; B-228916.3  
Competitive Negotiation Jan. 14, 1988  
Contract Awards 88-1 CPD 35  
Propriety

Agency's contracting officer had inadequate basis for contract award where award decision was based on inadequately documented evaluation team report and recommendation.

**PROCUREMENT** B-228120 Jan. 15, 1988  
Competitive Negotiation 88-1 CPD 36  
Offers  
Evaluation Errors  
Evaluation Criteria  
Application

**PROCUREMENT**  
Specifications  
Brand Name/Equal Specifications  
Equivalent Products  
Acceptance Criteria

Brand name manufacturer's protest of award on basis of agency's relaxation of salient characteristic is sustained since record establishes that agency in fact accepted a noncompliant offer.



**PROCUREMENT**  
**Special Procurement**  
**Methods/Categories**  
**Multi-year Leases**  
**Offers**  
**Cancellation**

**B-228279; B-228280 Con't**  
**Jan. 15, 1988**

Agency has reasonable basis to cancel solicitation for leased space where it becomes aware, after submitting draft lease to an offeror for execution but prior to government execution of the lease, that the offeror's building does not meet fire safety requirements that were not included in the solicitations.

**PROCUREMENT**  
**Competitive Negotiation**  
**Contract Awards**  
**Initial-Offer Awards**  
**Propriety**

**B-228303 Jan. 15, 1988**  
**88-1 CPD 39**

Where the procuring agency awarded a contract on the basis of initial proposals, but in light of the offers received it did not appear that acceptance of an initial proposal would result in the lowest overall cost to the government, as required by statute, the agency improperly did not conduct discussions.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

**B-229628 Jan. 15, 1988**  
**88-1 CPD 41**

Protester's contention that the requirements of specifications for filing cabinet pull handles were erroneous and its bid should be accepted as correct, will not be considered since alleged improprieties in a solicitation which are apparent prior to bid opening date must be filed before that time.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**

**B-229628 Con't**  
**Jan. 15, 1988**

**Responsiveness**  
**Terms**  
**Deviation**

Where the requirements of the solicitation represent the government's assessment of the specifications necessary for the procured item to sustain constant use without risk of deformity, a change by the protester is a material deviation rendering the bid nonresponsive.

**PROCUREMENT**  
**Bid Protests**  
**Allegation Investigation**  
**GAO Review**

**B-229925 Jan. 15, 1988**  
**88-1 CPD 42**

The General Accounting Office does not conduct investigations as part of its bid protest function to provide support for a protester's allegations.

**PROCUREMENT**  
**Bid Protests**  
**Bias Allegation**  
**Allegation Substantiation**  
**Burden of Proof**

An allegation that Defense Personnel Support Center acted in bad faith by failing to solicit best and final offers must be supported by virtually irrefutable proof to overcome presumption that contracting official acted in good faith.

**PROCUREMENT**

**B-214529 Jan. 19, 1988**

**Payment/Discharge**

**Unauthorized Contracts**

**Quantum Meruit/Valebant Doctrine**

A physician filed a quantum meruit claim for consultant services allegedly rendered to the Department of the Navy in the development of an improved ureteroscope. On the basis of our evaluation of the record in this matter, we find that he has not established that the government received and accepted a benefit, which is one of the criteria for recovery on a quantum meruit claim. Thus, his claim is denied.

**PROCUREMENT**

**B-228289 Jan. 19, 1988**

**Bid Protests**

**88-1 CPD 43**

**GAO Procedures**

**Protest Timeliness**

**Apparent Solicitation Improprieties**

Protest challenging evaluation scheme in solicitation is untimely when not filed before closing date for initial proposals.

**PROCUREMENT**

**Bid Protests**

**GAO Procedures**

**Protest Timeliness**

**Unapparent Solicitation Improprieties**

Protest that questions raised by agency during discussions were inconsistent with technical requirements in the solicitation and were intended to discredit protester's proposal is dismissed as untimely where it was not raised until after the agency had announced the intended awardee. Solicitation improprieties which do not exist in the initial solicitation, but which later are incorporated during discussions, must be protested no later than the next closing date for receipt of proposals.

**PROCUREMENT**

**B-228289 Con't**

**Competitive Negotiation**

**Jan. 19, 1988**

**Requests for Proposals**

**Evaluation Criteria**

**Cost/Technical Tradeoffs**

**Technical Superiority**

Protester's argument that as the low, technically compliant offeror it is entitled to award is denied where solicitation provided for award to the offeror whose offer represented the combination of technical merit and price most favorable to the government, and agency reasonably concluded that another offer's technical superiority and lower technical risk warranted its higher cost.

**PROCUREMENT**

**Competitive Negotiation**

**Technical Evaluation Boards**

**Bias Allegation**

**Allegation Substantiation**

**Evidence Sufficiency**

Protest that agency evaluation of protester's technical proposal was biased is denied where there is no evidence that agency evaluators were biased or that their alleged bias was translated into action that unfairly affected protester's competitive position.

**PROCUREMENT**

**B-228352 Jan. 19, 1988**

**Special Procurement**

**88-1 CPD 44**

**Methods/Categories**

**In-house Performance**

**Cost Estimates**

**Contract Administration**

**Personnel**

In preparing government's in-house estimate for cost comparison under OMB Circular A-76, agency properly excluded the cost of staff positions which, even though included in organization chart of most efficient organization study, were not performing work included in solicitation's performance work statement.

In preparing government's in-house estimate for cost comparison, it was proper for agency to partially cost six staff positions included in organization chart of most efficient organization (MEO), where the MEO specifically stated that these positions were to be costed in this manner and there is no evidence that the partial cost included in the estimate does not represent government's actual cost of performing the work required.

**PROCUREMENT**

**Special Procurement Methods/Categories**

**In-house Performance**

**Cost Evaluation**

**Administrative Policies**

**Deviation**

Agency's failure to follow formal cost comparison procedures for obtaining waiver from contract administration cost limits is a mere procedural defect not affecting the propriety of the cost comparison, where the official authorized to grant such a waiver approves the most efficient organization study, which includes proper justification for increased number of administrators.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**

**B-228449 Jan. 19, 1988**  
**88-1 CPD 45**

**Responsiveness**  
**Determination Criteria**

Under invitation for bids (IFB) for drydock and repair of a dredge, contracting agency improperly rejected as nonresponsive a bid which included the notation "no work specified" for one line item since the bidder was obligated to perform the work called for by the line item by another general provision in the IFB, and the "no work specified" notation merely indicated the bidder's position that the specific line item required no additional work beyond that already required by the general provision.

**PROCUREMENT**  
**Bid Protests**

**B-228724.3 Jan. 19, 1988**  
**88-1 CPD 46**

**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

Request for reconsideration of decision denying a protest is denied where no new facts or arguments are presented to indicate error in the previous decision.

**PROCUREMENT**  
**Bid Protests**

**B-228938.4 Jan. 19, 1988**  
**88-1 CPD 47**

**GAO Procedures**  
**Constructive Notification**

Prior dismissal of untimely protest is affirmed, notwithstanding protester's assertion that it was unaware of our timeliness requirements and that the protest was filed only a few days late, because the protester is charged with constructive notice of GAO's Bid Protest Regulations through their publication in the Federal Register.

**PROCUREMENT**

**B-229064 Jan. 19, 1988**

**Bid Protests**

**88-1 CPD 48**

**GAO Procedures**

**Protest Timeliness**

**10-day Rule**

Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later-raised issues must independently satisfy the General Accounting Office timeliness requirements.

**PROCUREMENT**

**Special Procurement Methods/Categories**

**Computer Equipment/Services**

**Contract Awards**

**Cost/Technical Tradeoffs**

**Technical Superiority**

Award of contract for computer software services to higher-priced offeror which had higher-ranked proposal in noncost areas is proper where protester has not shown that contracting agency's selection was unreasonable and where meaningful discussions were held with protester concerning problem areas of its proposal.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

**B-229654.2 Jan. 19, 1988**  
**88-1 CPD 49**

Prior decision holding that if considered a timely initial agency protest the subsequent protest with General Accounting Office was untimely because it was not filed within the required 10 working days after the closing date for receipt of proposals--the initial adverse agency action--is affirmed; the fact that the procuring agency received proposals on the scheduled closing date without taking any corrective action in response to the protest constitutes adverse agency action and begins the running of the 10-day limitation period.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small Businesses**  
**Responsibility**  
**Negative Determination**  
**GAO Review**

**B-229705.2 Jan. 19, 1988**  
**88-1 CPD 50**

General Accounting Office will not review a protester's allegation of bad faith on the part of procurement officials in determining that the firm is nonresponsible where the firm fails to pursue its administrative remedy of applying for a Certificate of Competency from the Small Business Administration.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

**B-229755 Jan. 19, 1988**  
**88-1 CPD 51**

Protest that award to selected contractor for medical equipment and supplies violates the Price Reduction Clause of the awardee's Federal Supply Schedule contract is dismissed as untimely where it was not filed within 10 working days after protester learned the basis for protest.

**PROCUREMENT**  
**Bid Protests**  
**Moot Allegation**  
**GAO Review**

**B-229934 Jan. 19, 1988**  
**88-1 CPD 52**

Allegation that preaward survey of protester's facility was not adequate is without merit where protester was not in line for award, and the agency thus was not required to conduct survey at all.

**PROCUREMENT**  
**Competitive Negotiation**  
**Below-Cost Offers**  
**Acceptability**

The fact that an offer may be below-cost or represent a buy-in is not a basis for rejecting the offer where the offeror is determined to be responsible.

**PROCUREMENT** **B-227252.2 Jan. 20, 1988**  
**Competitive Negotiation 88-1 CPD 53**  
**Offers**  
**Evaluation**  
**Technical Acceptability**

Even if user's manual for tabletop label affixing machines furnished by the eventual awardee in an intermediate stage of the procurement prior to a successful live test demonstration of the equipment did not cover all the topics literally required by the solicitation, that would not provide basis for sustaining another offeror's protest because agency appears to have used reasonable judgment in assessing the adequacy of the manual in view of the relative lack of complexity of the equipment and because protester would not be prejudiced since a portion of its own manual was in a form (videotape) not readily accessible to the user. Request for reconsideration is denied.

**PROCUREMENT** **B-228167 Jan. 20, 1988**  
**Contractor Qualification 88-1 CPD 54**  
**Responsibility**  
**Contracting Officer Findings**  
**Negative Determination**  
**Prior Contract Performance**

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility Criteria**  
**Contractors**

Contracting officer's finding that the protester was nonresponsible for award of a cost-reimbursement contract was reasonable, where it was based upon: (1) two inspector general audit reports which revealed numerous accounting and record-keeping deficiencies, as well as protester's possible financial problems, and (2) information provided by a firm listed in the protester's proposal as a reference (a prime contractor for whom the protester was a subcontractor doing similar work for the contracting agency) which showed record of poor prior performance by the protester.



**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

**B-228552 Jan. 20, 1988**  
**88-1 CPD 56**

Protest that the contracting agency's evaluation and scoring of technical proposals is suspect because the agency's questions requesting clarification of protester's initial proposal contained miscited sections and incorrectly identified page and paragraph numbers is untimely, because it was required to be filed before the due date for revised proposals but was raised only after the protester lost the competition.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Technical Acceptability**

Protest that the contracting agency's technical evaluation of the successful offeror was improper because the firm is in bankruptcy is denied, because technical evaluation focuses on the proposal itself, whereas the bankruptcy's effect concerns the offeror's ability to perform as proposed. Moreover, the contracting officer considered the matter in finding the offeror responsible--the fact that a firm is undergoing bankruptcy does not require a finding of nonresponsibility--and the General Accounting Office will not review an affirmative responsibility determination except in limited circumstances.



**PROCUREMENT**

**B-228308 Jan. 22, 1988**

**Competitive Negotiation  
Discussion  
Adequacy  
Criteria**

**88-1 CPD 59**

Protest that agency failed to hold meaningful discussions because it did not raise a specific perceived deficiency with a protester whose proposal the agency determined to be technically unacceptable is denied where the agency maintains that in fact it did discuss the specific deficiency, and, even assuming the agency did not discuss the perceived deficiency in specific terms, the record establishes that the deficiency was only one among many shortcomings that led to rejection of the proposal.

**PROCUREMENT**

**B-228372 Jan. 22, 1988**

**Sealed Bidding  
Bids**

**88-1 CPD 60**

**Responsiveness  
Brand Name/Equal Specifications  
Salient Characteristics**

Allegation by protester that awardee's brand name product is nonresponsive because it does not offer the same brand name specifications required by the solicitation is meritless where, as of the time of bid opening, the brand name product complied with the salient characteristics and the contracting officer had no reason to believe that there was an exception to the specifications or a disparity between the invitation for bids and the brand name product.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**

**B-228372 Con't**  
**Jan. 22, 1988**

**Responsiveness**  
**Descriptive Literature**  
**Adequacy**

Protester's bid was properly found to be nonresponsive to a brand name or equal invitation for bids where protester's bid for the supply of an "equal" item failed to show through its descriptive literature that the offered product complied with numerous salient characteristics specified in the solicitation.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**

**B-229572.2 Jan. 22, 1988**  
**88-1 CPD 62**

**Responsiveness**  
**Additional Information**  
**Post-Bid Opening Periods**

Protester's allegation that bid which failed to include information about work to be performed by bidder's organization, as required by the invitation for bids, was nonresponsive is without merit, since the information relates to responsibility and therefore may be furnished any time before award of the contract.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**

**B-229883.2 Jan. 22, 1988**  
**88-1 CPD 63**

**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Protest that the award selection of travel services contract was based upon allegedly illegal concession fee on unofficial international travel is untimely filed under the General Accounting Office's Bid Protest Regulations, where the solicitation specifically solicited concession fees and provided that it was an award evaluation factor, and the protest was not filed prior to the closing date for receipt of initial proposals.

**PROCUREMENT**  
**Bid Protests**  
**Moot Allegation**  
**GAO Review**

**B-229945 Jan. 22, 1988**  
**88-1 CPD 64**

Protest is dismissed where action taken by the agency has rendered issues raised therein academic. The General Accounting Office (GAO) will not consider an issue of protest where the agency has altered its actions so that no useful purpose would be served by GAO's decision.

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility**  
**Contracting Officer Findings**  
**Negative Determination**  
**GAO Review**

Contracting officer's determination that a small business concern is nonresponsible is not for review where the protester has not shown either possible fraud or bad faith on the part of government officials.

**PROCUREMENT**  
**Bid Protests**  
**Non-prejudicial Allegation**  
**GAO Review**

**B-229967 Jan. 22, 1988**  
**88-1 CPD 65**

An agency's request for an employee list only from the incumbent provides no legal basis to object to an award where no prejudice is shown.

**PROCUREMENT** B-228318 Jan. 25, 1988  
Competitive Negotiation 88-1 CPD 66  
Contract Awards  
Initial-Offer Awards  
Propriety

Protest against award of contract on the basis of initial proposals is denied where the solicitation advised offerors of that possibility and the existence of adequate competition demonstrated that acceptance of the most favorable initial proposal would result in the lowest overall cost to the government.

**PROCUREMENT** B-228477.2 Jan. 25, 1988  
Bid Protests 88-1 CPD 67  
GAO Procedures  
Administrative Reports  
Comments Timeliness

Dismissal of protest is affirmed where protester's comments on contracting agency's report were received in the General Accounting Office (GAO) after the 7-day period for filing comments, even though the protester's comments were mailed to GAO within the 7-day period.

**PROCUREMENT** B-228482 Jan. 25, 1988  
Competitive Negotiation 88-1 CPD 68  
Offers  
Evaluation  
Technical Acceptability

Protest that awardee's equipment fails to technically conform to solicitation's specifications is denied where agency demonstrates that it had a reasonable basis for determining that awardee's proposed equipment conformed to the terms of the solicitation and protester has offered no evidence to the contrary.

**PROCUREMENT**

**B-228482 Con't**

**Competitive Negotiation**

**Jan. 25, 1988**

**Offers**

**Evaluation**

**Technical Acceptability**

**Tests**

Protester's argument that awardee's offered equipment should be subject to testing requirements imposed upon protester's equipment in prior procurements is without merit. Agency is required to base its evaluation of proposals (and therefore offered equipment) solely upon evaluation criteria stated in solicitation. Where no testing requirement is imposed by the solicitation, no such demand can later be imposed upon an awardee.

**PROCUREMENT**

**Contract Management**

**Contract Administration**

**Contract Terms**

**Compliance**

**GAO Review**

Protest that awardee's license to score a particular psychological test is due to expire before the end of the contract term is dismissed, since the awardee has a present ability to perform under the contract in accordance with the technical specifications (including the licensing requirement) and the possible future expiration of the awardee's license is a matter of contract administration which will not be reviewed by this Office.

**PROCUREMENT** **B-228600** **Jan. 25, 1988**  
**Competitive Negotiation** **88-1 CPD 69**  
**Contract Awards**  
**Administrative Discretion**  
**Cost/Technical Tradeoffs**  
**Cost Savings**

Where solicitation states that technical factors will be weighted 40 percent and price 60 percent and award will be made to the offeror most advantageous to the government, the contracting agency may properly award to lower technically rated, lower priced offeror with lower combined point total because the contracting officer made a reasonable determination that protester's technical superiority was not worth the extra cost associated with its proposal and that award to the lower priced offeror was most advantageous to the government.

**PROCUREMENT** **B-229604; B-229606**  
**Bid Protests** **Jan. 25, 1988**  
**GAO Procedures** **88-1 CPD 70**  
**Interested Parties**

Firm that is not a prospective bidder because it cannot meet a legitimate solicitation requirement is not an interested party under the General Accounting Office's Bid Protest Regulations to protest the propriety of other solicitation provisions.

**PROCUREMENT**  
**Specifications**  
**Minimum Needs Standards**  
**Competitive Restrictions**  
**Performance Specifications**  
**Justification**

Solicitation requirement for security clearance prior to contract award does not unduly restrict competition where contract performance will involve classified materials and performance would be impossible unless the contractor's employees have security clearance.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

**B-229739 Jan. 25, 1988**  
**88-1 CPD 71**

Protester's new and independent grounds of protest are dismissed where the later raised issues do not independently satisfy the timeliness rules of General Accounting Office's Bid Protest Regulations.

**PROCUREMENT**  
**Sealed Bidding**  
**Bid Guarantees**  
**Responsiveness**  
**Signatures**  
**Omission**

Failure of a bidder to sign a bid bond in the capacity of principal constitutes a minor informality that can be waived where the unsigned bond is submitted with a signed bid.

**PROCUREMENT**

**B-228014.2 Jan. 26, 1988**

**Special Procurement**

**88-1 CPD 72**

**Methods/Categories**

**In-house Performance**

**Cost Estimates**

**Contract Administration**

**Personnel**

Protest that in-house cost estimate prepared for comparison with commercial proposals under Office of Management and Budget (OMB) Circular A-76 was based on a staffing level that the Source Selection Evaluation Board (SSEB), which was to evaluate the commercial proposals, would have found unacceptable is dismissed. SSEB did not evaluate or consider the government estimate, and its judgment as to the merits of that estimate is therefore irrelevant.

Protest that level of staffing in the government's estimate is inadequate to perform the workload described in the solicitation's performance work statement is denied where protester fails to demonstrate that the agency's determination of the requisite level of staffing was made in a manner tantamount to fraud or bad faith.

**PROCUREMENT**

**B-228207 Jan. 26, 1988**

**Bid Protests**

**88-1 CPD 73**

**Bias Allegation**

**Allegation Substantiation**

**Burden of Proof**

A protester has a heavy burden to show bad faith by contracting officials, and must submit virtually irrefutable proof that officials had a specific and malicious intent to harm the protester.

**PROCUREMENT**

**B-228207 Con't**

**Bid Protests**

**Jan. 26, 1988**

**GAO Procedures**

**Minor Deviations**

**Remedies**

**Information Sufficiency**

The protester's failure to state the relief requested is a minor procedural defect which does not require dismissal of the protest.

**PROCUREMENT**

**Bid Protests**

**Non-Prejudicial Allegation**

**GAO Review**

Protester's receipt of the agency report 1 day late, though timely filed at the General Accounting Office (GAO), did not prejudice the protester who had an opportunity to submit its comments on the report to GAO.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Evaluation Errors**

**Allegation Substantiation**

Protest that agency improperly evaluated proposals is denied where protester indicates its disagreement with the agency's evaluation but does not demonstrate that the evaluation was unreasonable.

**PROCUREMENT**  
**Bid Protests**  
**Allegation**  
**Abandonment**

**B-228357 Jan. 26, 1988**  
**88-1 CPD 75**

Protester initially raised issues concerning an alleged failure of the agency to conduct a cost and price analysis which was contested in the agency report. Since the protester did not pursue the issue in its subsequent comments, the matter is considered abandoned and will not be considered.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Interested Parties**

General Accounting Office does not consider protest issues which are essentially made on behalf of other potential offerors who themselves may properly protest as interested parties.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Protester's allegation that, based on a prior procurement, request for proposal should have been a repetitive set-aside for small business is untimely raised after closing date for receipt of proposals because information which formed the grounds of protest was publicly available at the time the protested solicitation was issued and could have been discovered if it had been diligently pursued prior to closing date for receipt of proposals.

Protest issues concerning alleged solicitation deficiencies, such as challenges to restrictive specifications, must be raised prior to the closing date for receipt of proposals.

**PROCUREMENT** **B-228357 Con't**  
**Socio-Economic Policies** **Jan. 26, 1988**  
**Small Business Set-Asides**  
**Use**  
**Procedural Defects**

Request for proposal was not issued as a partial set-aside for small business where RFP clearly indicated that two awards were to be "100 percent" set-aside for small business, it did not contain required partial set-aside clauses, at it contained terms which were inconsistent with the conduct of a partial set-aside.

Although the record does not disclose that the contracting officer executed a determination of urgency prior to award which would have been necessary in order to waive pre-award notice to unsuccessful offerors on a small business set-aside, this deficiency does not affect the validity of the award since the protester was not the next small business in line for award under the set-aside.

**PROCUREMENT** **B-228373 Jan. 26, 1988**  
**Bid Protests** **88-1 CPD 76**  
**GAO Procedures**  
**Interested Parties**

Protest by potential subcontractor that procurement is unduly restrictive is dismissed, since the firm is not a prospective offeror under the solicitation and therefore is not an interested party eligible to protest under General Accounting Office's Bid Protest Regulations.

**PROCUREMENT** **B-228373 Con't**  
**Competitive Negotiation** **Jan. 26, 1988**  
**Requests for Proposals**  
**Competitive Restrictions**  
**Domestic Sources**  
**Industrial Mobilization Bases**

Protest that agency improperly restricted solicitation to offerors that are mobilization base planned producers is denied where restriction is required so agency can maintain a warm production base and the protester does not demonstrate the agency abused its discretion in imposing the restriction.

**PROCUREMENT** **B-228490 Jan. 26, 1988**  
**Competitive Negotiation** **88-1 CPD 77**  
**Offers**  
**Evaluation**  
**Technical Acceptability**

Proposal which offered only one full-time counselor in response to RFP which indicated that four full-time counselors were required was reasonably determined to be technically unacceptable.

Failure of technical review committee to recommend that proposal be found technically unacceptable does not preclude source selection official from so determining since source selection official is not bound by recommendation of technical evaluators.

Proposed lower cost of technically unacceptable proposal is not relevant since the proposal is ineligible for award.

**PROCUREMENT**

**B-228509 Jan. 26, 1988**

**Bid Protests**

**88-1 CPD 78**

**GAO Procedures**

**Protest Timeliness**

**Apparent Solicitation Improprieties**

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Competitive Ranges**

**Exclusion**

**Administrative Discretion**

Agency's decision to exclude protester's initial proposal from the competitive range was unobjectionable where protester failed to offer required approach to processing acoustic signals and its proposal would require major revisions in order to be made technically acceptable; if protester viewed specifications as unduly restrictive, precluding allegedly equivalent or superior approaches to performing required functions, it was required to protest any such alleged deficiencies prior to the closing date for receipt of initial proposals.

**PROCUREMENT**

**B-229675 Jan. 26, 1988**

**Bid Protests**

**88-1 CPD 79**

**GAO Procedures**

**Protest Timeliness**

**10-day Rule**

Protest that firm was unreasonably denied an opportunity to compete filed months after procurements were conducted is untimely filed since the General Accounting Office Bid Protest Regulations require that a protest be filed no later than 10 working days after the basis of protest is known or should have been known, whichever is earlier.

**PROCUREMENT**  
**Bid Protests**  
**Moot Allegation**  
**GAO Review**

**B-228258 Jan. 27, 1988**  
**88-1 CPD 80**

General Accounting Office finds it unnecessary to decide jurisdictional issue raised by agency where it is clear that protest is otherwise for dismissal as without merit under Bid Protest Regulation, 4 C.F.R. § 21.3(f) (1987).

**PROCUREMENT**  
**Competitive Negotiation**  
**Contract Awards**  
**Administrative Discretion**  
**Cost/Technical Tradeoffs**  
**Technical Superiority**

**B-228434 Jan. 27, 1988**  
**88-1 CPD 81**

In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost. The contracting agency may properly exercise its judgment to select a technically superior but higher-priced proposal where the solicitation evaluation criteria provide that cost considerations are secondary to technical merit.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Competitive Ranges**  
**Inclusion**  
**Administrative Discretion**

Agency reasonably requested best and final offer from protester despite its relatively lower technical score, since regulations provide for inclusion of proposal in the competitive range when there is doubt as to whether it should be included.



**PROCUREMENT** **B-230031 Con't**  
**Sealed Bidding** **Jan. 27, 1988**  
**Bids**  
**Responsiveness**  
**Bid Guarantees**  
**Omission**

Failure to furnish a bid guarantee with the bid requires the rejection of the bid as nonresponsive.

**PROCUREMENT** **B-227061.3 Jan. 28, 1988**  
**Bid Protests** **88-1 CPD 84**  
**GAO Procedures**  
**Agency Notification**  
**Late Submission**

Dismissal of protest for failure to file a copy with the contracting agency within 1 day after filing with the General Accounting Office is affirmed since mailing a copy, as protester contends it did, does not satisfy requirement for actual receipt of copy of protest by contracting agency within 1 day. Failure to provide copy of protest will not be waived simply because of additional effort necessary to meet requirement when protest involves contracting activity located overseas.

**PROCUREMENT** **B-228168.2 Jan. 28, 1988**  
**Competitive Negotiation** **88-1 CPD 85**  
**Offers**  
**Competitive Ranges**  
**Exclusion**  
**Administrative Discretion**

After conducting one round of discussions with offeror, agency properly determined that offeror was no longer in the competitive range since its proposal was found technically unacceptable based on agency's evaluation which was supported by reasonable bases.

**PROCUREMENT** B-228233, et al.  
**Competitive Negotiation** Jan. 28, 1988  
**Offers** 88-1 CPD 86  
**Competitive Ranges**  
**Exclusion**  
**Administrative Discretion**

Protest of exclusion of proposal from the competitive range is denied where the protester has not shown that the technical evaluation finding its proposal unacceptable was unreasonable.

**PROCUREMENT** B-218992 Jan. 29, 1988  
**Payment/Discharge**  
**Shipment**  
**Carrier Liability**  
**Burden of Proof**

The government's prima facie case of liability against a carrier for the loss of one article in a shipment of freight is not overcome when that carrier later returns a free astray overage of a different article for credit to the shipper that is not shown to be connected to the original shipment from which there was a loss.

**PROCUREMENT** B-228230.2 Jan. 29, 1988  
**Sealed Bidding** 88-1 CPD 88  
**Invitations for Bids**  
**Pre-Qualification**  
**Contractor Personnel**

General Accounting Office will not object to a solicitation clause providing for agency approval of employees proposed by contractor for key positions, where agency determines that such approval is necessary to ensure required high quality performance, and protester does not establish that the requirement exceeds agency's needs or otherwise is improper.

**PROCUREMENT**

**B-228498 Jan. 29, 1988**

**Sealed Bidding**

**88-1 CPD 89**

**Ambiguous Bids**

**Determination Criteria**

Brand name manufacturer's bid was properly rejected as nonresponsive where unsolicited "specifications" furnished with bid created an ambiguity as to what bidder intended to furnish by omitting reference to required salient characteristic.

**PROCUREMENT**

**Sealed Bidding**

**Invitations for Bids**

**Cancellation**

**Resolicitation**

**Propriety**

Cancellation of invitation for bids and conversion of solicitation to request for proposals is appropriate under applicable regulations where all bids received from responsible bidders are nonresponsive.

**PROCUREMENT**

**B-228785 Jan. 29, 1988**

**Payment/Discharge**

**Shipment Costs**

**Overcharge**

**Payment Deductions**

**Propriety**

A carrier collected an extra \$25 charge on each Government Bill of Lading shipment for telephone calls the carrier determined were necessary to identify the precise delivery points and to obtain delivery appointments. GSA deducted the amount as overcharges on the grounds that no tender or tariff provision authorized the charge, shippers did not request the service, and if the destination information shown on the GBLs was incomplete the carrier had a duty to obtain the complete addresses without charge at origin. On these grounds, GSA's actions are sustained.

**PROCUREMENT**

B-228999 Jan. 29, 1988

Payment/Discharge

Shipment

Carrier Liability

Burden of Proof

The government's prima facie case of liability against a carrier for the loss of one article in a shipment of freight is not overcome when that carrier shows that it delivered a free astray overage of a different article that is not shown to be connected to any of its other shipments.

**PROCUREMENT**

B-229686 Jan. 29, 1988

Sealed Bidding

88-1 CPD 89

Invitations for Bids

Terms

Contract Performance

Evaluation

Provision in a solicitation which authorizes deduction for value of unsatisfactorily performed tasks, monitored by random sampling and customer complaint, in proportion to the defective performance imposes a reasonable measure of damages.

**PROCUREMENT**

B-229759.2 Jan. 29, 1988

Bid Protests

88-1 CPD 90

GAO Procedures

Protest Timeliness

10-day Rule

Protest against agency's rejection of low bidder based on nonresponsibility determination is untimely where protest was filed with General Accounting Office more than 10 working days after protester learned of adverse agency action following protest to the agency.

**PROCUREMENT**

**B-229938 Jan. 29, 1988**

**Bid Protests**

**88-1 CPD 91**

**GAO Procedures**

**Protest Timeliness**

**Apparent Solicitation Improprieties**

Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals are untimely if not filed prior to closing.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Price Reasonableness**

**Determination**

**Administrative Discretion**

The determination of price reasonableness is a matter of administrative discretion involving the exercise of business judgment by the contracting officer.

**PROCUREMENT**

**Socio-Economic Policies**

**Labor Standards**

**Service Contracts**

**Wage Rates**

**GAO Review**

The General Accounting Office does not consider the correctness or accuracy of Department of Labor wage determinations issued in connection with solicitations subject to the Service Contract Act.

**PROCUREMENT**

**Socio-Economic Policies**

**Small Business Set-Asides**

**Use**

**Administrative Discretion**

A procurement need not be set aside for small business concerns where the contracting officer, relying on information regarding a previous similar contract, determines that there is no reasonable expectation that offers from at least two responsible small business concerns would be received.

**PROCUREMENT**

**B-229985 Jan. 29, 1988**

**Bid Protests**

**88-1 GPD 92**

**GAO Procedures**

**Protest Timeliness**

**Apparent Solicitation Improprieties**

Protest based on alleged improprieties in solicitation is not timely where protest was not filed prior to the closing date for receipt of initial proposals.

**PROCUREMENT**

**Bid Protests**

**Non-Prejudicial Allegation**

**GAO Review**

The Federal Acquisition Regulation's requirement for the integrity of unit prices is not violated by a bid containing allegedly disproportionate prices where that pricing method has not been shown to have worked to the prejudice of the protester.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Price Omission**

**Line Items**

An offeror may elect not to charge for an item if it indicates a commitment to furnish the item without charge by inserting \$0.00 or N/C.

**PROCUREMENT**

**B-230029 Jan. 29, 1988**

**Socio-Economic Policies**

**88-1 CPD 99**

**Small Business Set-Asides**

**Use**

**Justification**

Since the basis for setting a procurement aside for small businesses is the reasonable expectation that offers will be obtained from at least two responsible small business concerns and that awards will be made at reasonable prices, the number of small business firms that actually submitted bids is not relevant to the propriety of the set-aside.

## **MISCELLANEOUS TOPICS**

**MISCELLANEOUS TOPICS                    B-219816   Jan. 28, 1988**  
**National Security/International Affairs**  
**Cooperative Agreements**  
**Weapons**

The agreement for cooperation concluded with Sweden, Norway and Finland that includes advance approvals for the duration of each of the 30-year agreements for the transfer to designated facilities in nuclear-weapon states of spent fuels for reprocessing appear to be legally permissible. Nevertheless, there is reason for careful scrutiny when advance approvals involve reprocessing in a non-nuclear weapon state or retransfers of plutonium to a non-nuclear weapon state. Under these circumstances, it may not be possible to meet the timely warning and proliferation risk standards required by the Nuclear Nonproliferation Act. However, neither of these situations is present in the agreements concluded with Sweden, Norway and Finland.

**MISCELLANEOUS TOPICS**  
**National Security/International Affairs**  
**Executive Branch**  
**Legislation**  
**Interpretation**

The executive branch's statement of its interpretation of the meaning and application of the Nuclear Nonproliferation Act's timely warning standard is a legally permissible one. Neither the statute nor its legislative history confines a timely warning analysis to a technical assessment. However, consideration of non-technical factors in a timely warning analysis cannot override the need to perform a technical assessment of the capabilities of the recipient country to transform diverted material into a nuclear explosive device.

**MISCELLANEOUS TOPICS**

**B-229212 Jan. 12, 1988**

**Commerce**

**Corporate Entities**

**Citizenship**

**Determination**

The State Department's regulations for determining the nationality of a corporation under the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. (1982), and the Japanese Friendship Commerce and Navigation Treaty are valid and unaffected by the Supreme Court's decision in Sumitomo Shoji v. Avagliano, 457 U.S. 176 (1982).

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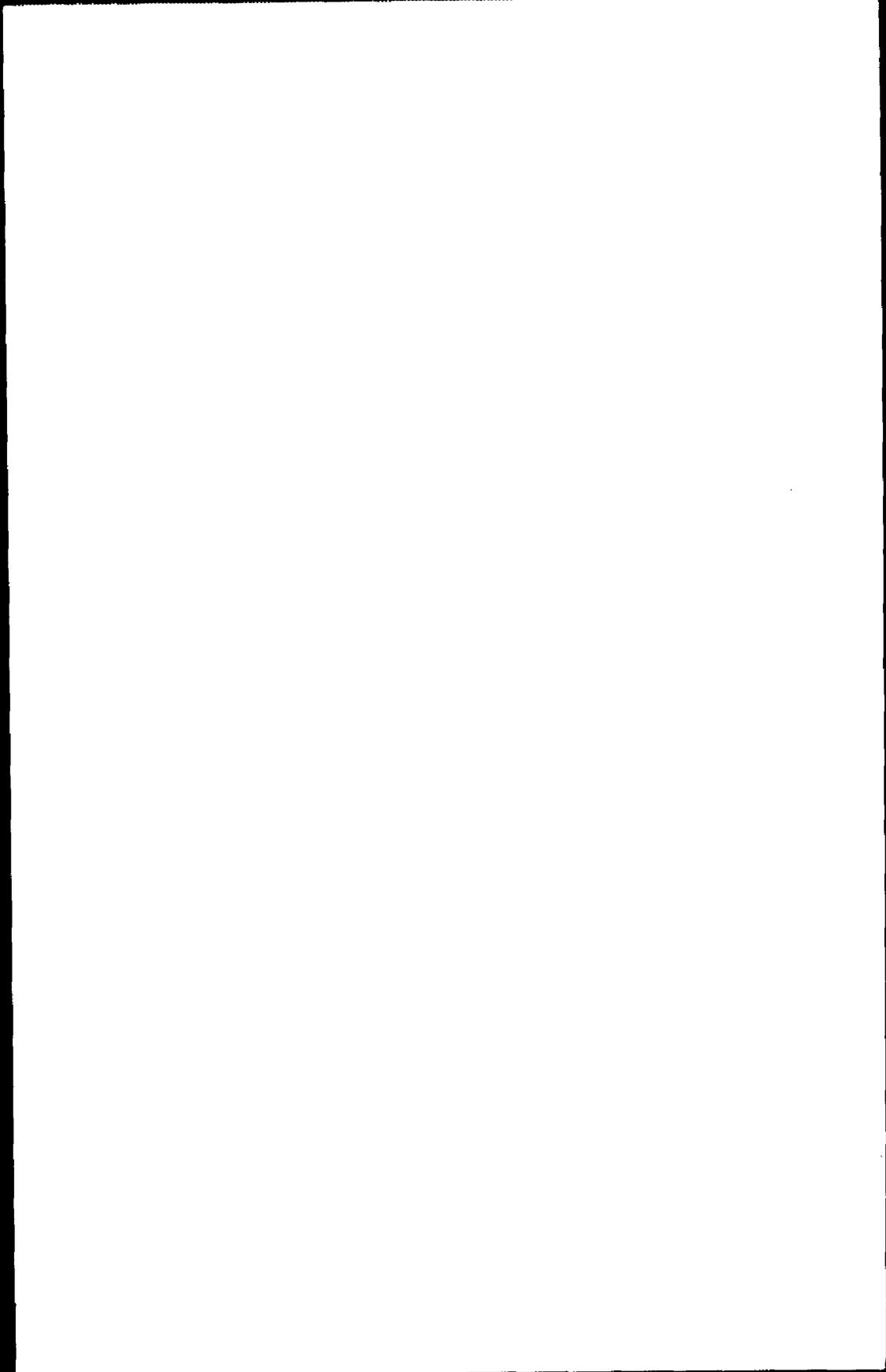
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